

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 453 Law Enforcement and Correctional Officers

**SPONSOR(S):** Duggan

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 884

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee		Villa	Smith
2) Judiciary Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Law Enforcement Officers' Bill of Rights (LEOBOR) provides certain statutory rights and privileges to law enforcement and correctional officers who are under investigation and subject to interrogation for any reason that could result in disciplinary action. The LEOBOR defines "law enforcement officer" and "correctional officer" to mean officers employed on a full time basis.

Currently, disciplinary action may not be taken against an officer unless the investigation is completed within 180 days after the date the agency receives notice of the allegation of misconduct by a person authorized by the agency to initiate an investigation of the misconduct. Notice of disciplinary action must be provided to the officer within 180 days. Florida courts have interpreted the 180-day provision as applying only to external complaints and not to internal complaints.

Prior to 2009, an officer injured by his or her employing agency's failure to comply with the LEOBOR could petition the circuit court for an injunction to restrain and enjoin such violation and to compel the performance of the duties imposed by the LEOBOR. Effective July 1, 2009, this judicial remedy was replaced with a multi-step process culminating in a compliance review hearing before an administrative panel with the authority to remove the investigator from further involvement in the case and direct the initiation of an investigation against the investigator.

The bill revises the definitions of "law enforcement officer" and "correctional officer" to include officers employed part time. The bill further specifies that the 180-day provision applies regardless of the origin of the allegation or complaint. The 180-days begin once the agency receives notice of the allegation, not only once the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.

The bill amends the LEOBOR to provide that if a law enforcement or correctional officer fails to comply with the LEOBOR, or if the injury suffered by the officer is not capable of being remedied by a compliance review hearing, the officer may file an action for injunctive relief in the circuit court where the agency is located to enforce the requirements of the LEOBOR. Furthermore, clear and convincing evidence that the agency violated the LEOBOR constitutes irreparable harm for purposes of injunctive relief.

The bill may have a negative fiscal impact on state and local governments. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Law Enforcement Officers' Bill of Rights

Chapter 112, Part VI, F.S., commonly known as the Law Enforcement Officers' Bill of Rights (LEOBOR), provides specific rights when a law enforcement officer<sup>1</sup> or correctional officer<sup>2</sup> is under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. The LEOBOR defines "law enforcement officer" and "correctional officer" to mean officers employed on a full time basis.

The LEOBOR prescribes the conditions under which an interrogation of an officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, as well as restrictions on the interrogation techniques.<sup>3</sup> The LEOBOR further affords officers:

- the right to be informed of the nature of the investigation;
- the right to be provided with all evidence against the officer before any interrogation;
- the right to counsel during any interrogation;
- the right to the interrogation recording;
- the right to a complete copy of the investigative file;
- the right to be notified of the reason for disciplinary action before it is imposed; and
- the right to address the findings in the investigative file with the employing agency before disciplinary action is imposed.<sup>4</sup>

An officer cannot be disciplined or otherwise discriminated against for exercising his or her rights under the LEOBOR.<sup>5</sup>

##### Limitations Period for Disciplinary Action

The LEOBOR provides that disciplinary action may not be taken against an officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.<sup>6</sup> No statutory provision identifies who within the agency must receive the complaint. As such, the policy of the law enforcement agency or correctional agency determines the individual or individuals authorized by the agency to receive a complaint and initiate an investigation of officer misconduct.<sup>7</sup>

Florida courts have interpreted the 180-day provision as applying only to external complaints and not to internal complaints. In *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*<sup>8</sup> an internal complaint was filed against an officer and the agency's subsequent investigation exceeded 180 days. The court reaffirmed its prior interpretation and held that the 180-day provision does not apply to internal complaints because the 180-day provision is triggered by the agency's *receipt* of a complaint,

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<sup>1</sup> Section 112.531(1), F.S., defines "law enforcement officer" as "any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07."

<sup>2</sup> Section 112.531(2), F.S., defines "correctional officer" as "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

<sup>3</sup> Section 112.532(1), F.S.

<sup>4</sup> Section 112.532(1) & (4), F.S.

<sup>5</sup> Section 112.532(5), F.S.

<sup>6</sup> Section 112.532(6), F.S.

<sup>7</sup> Attorney General Opinion 2006-25 (June 29, 2006).

<sup>8</sup> *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, 148 So. 3d 798 (Fla. 1st DCA 2014).

and therefore, the complaint would need to come from a person outside the agency for the 180-day provision to apply.<sup>9</sup>

If the agency determines that disciplinary action is appropriate, it must complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action. Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct. The running of the limitations period may be tolled or extended under certain circumstances.<sup>10</sup>

#### Compliance Review Procedures

Prior to 2009, a law enforcement or correctional officer injured by his or her agency's failure to comply with the LEOBOR could petition the circuit court for an injunction to restrain and enjoin the violation and compel performance of the duties imposed by the LEOBOR.<sup>11</sup> However, ch. 2009-200, L.O.F., replaced this judicial remedy with the current multi-step process culminating in a compliance review hearing. The purpose of a compliance review hearing is to remedy violations of the LEOBOR by removing the investigator from further involvement in the case.<sup>12</sup>

Currently, if an investigative officer or agency fails to comply with the LEOBOR, the officer under investigation may request a compliance review hearing.<sup>13</sup> The officer is required to advise the investigator of the intentional violation of the LEOBOR alleged.<sup>14</sup> If the investigator fails to cure the violation or continues the violation after being notified by the officer, the officer must request the agency head or his or her designee be informed of the alleged intentional violation.<sup>15</sup> Once this request is made, the interview of the officer must cease.<sup>16</sup> Thereafter, a written notice of violation and request for a compliance review hearing must be filed within three working days with the agency head or designee which must contain sufficient information to identify the alleged intentional violation of the LEOBOR.<sup>17</sup>

Unless otherwise remedied by the agency before a hearing, a compliance review hearing must be conducted within ten working days after the request for a compliance review hearing is filed.<sup>18</sup>

An officer under investigation for a disciplinary matter is entitled a compliance review hearing to review alleged violations of the LEOBOR, regardless of the source of the complaint that led to the investigation.<sup>19</sup> The compliance review panel<sup>20</sup> reviews the circumstances and facts surrounding the

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<sup>9</sup> *Id.* See also *McQuade v. Department of Corrections*, 51 So. 3d 489 (Fla. 1st DCA 2010); *Migliore v. City of Lauderhill*, 415 So. 2d 62 (Fla. 4th DCA 1982); *approved*, 431 So. 2d 986 (Fla. 1983).

<sup>10</sup> The running limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer; must be tolled during the time that any criminal investigation or prosecution is pending in connection with act, omission, or other allegation of misconduct; must be tolled if the investigation involves an officer who is incapacitated or otherwise unavailable; may be extended during a multijurisdictional investigation to facilitate coordination with other agencies involved; may be tolled for certain emergencies or natural disasters; and must be tolled during the time that the officer's compliance hearing proceeding is continuing beginning with the filing of notice of violation and a request for a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency. Section 112.532(6), F.S.

<sup>11</sup> *Fraternal Order of the Police, Gator Lodge 67*, 148 So. 3d 798, at 802.

<sup>12</sup> *Id.* at 805.

<sup>13</sup> Section 112.534(1), F.S.

<sup>14</sup> Section 112.534(1)(a), F.S.

<sup>15</sup> Section 112.534(1)(b), F.S.

<sup>16</sup> *Id.* Refusal to respond to an investigative question by the officer does not constitute insubordination or any similar type of policy violation.

<sup>17</sup> Section 112.534(1)(c), F.S.

<sup>18</sup> An alternate date may be chosen by mutual agreement of the officer and agency or for extraordinary reasons. Section 112.534(1)(d), F.S.

<sup>19</sup> *Fraternal Order of the Police, Gator Lodge 67*, 148 So. 3d 798, at 805-06.

<sup>20</sup> The compliance review panel is made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member selected by the other two members. These members must be active law enforcement or correctional officers from the same law enforcement discipline as the officer filing the request. The panel may be selected from any state, county, or municipal agency within the county in which the officer works. Section 112.534(1)(d), F.S.

alleged intentional violation and must determine whether or not the investigator or agency intentionally violated the requirements of the LEOBOR.<sup>21</sup>

A compliance review panel only reviews alleged violations of the LEOBOR occurring while the investigation is ongoing. In other words, once the investigation is completed, a compliance review hearing is no longer available.<sup>22</sup> If an alleged violation is sustained by the compliance review panel, the agency head must immediately remove the investigator from any further involvements with the investigation of the office.<sup>23</sup>

## **Effect of the Bill**

The bill revises the definitions of “law enforcement officer” and “correctional officer” to include officers employed on a part time basis for the purposes of misconduct review proceedings.

The bill specifies that the 180-day provision applies regardless of the origin of the allegation or complaint. Therefore, investigations of external and internal complaints must be completed within 180 days, and if the agency determines that disciplinary action is appropriate, the officer must be provided written notice within 180 days. Additionally, the bill provides that the 180-days begins once the agency receives notice of the allegation or complaint, not only once the agency receives notice by a person authorized to initiate an investigation of the misconduct.

Additionally, the bill allows a law enforcement officer or correctional officer to file for injunctive relief in certain situations. Specifically, if a law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, fails to comply with the requirements of the LEOBOR, an officer who is personally injured by such failure to comply may file an action for injunctive relief to enforce the requirements of the LEOBOR.

The bill also provides for injunctive relief if the injury suffered by the officer employed by or appointed to the agency is not capable of being remedied by a compliance review hearing. In that case, the officer who is personally injured by such failure to comply may file an action for injunctive relief to enforce the requirements of the LEOBOR.

The bill requires the action for injunctive relief to be filed in the circuit court where the agency is located. The bill specifies that clear and convincing<sup>24</sup> evidence an agency violated the LEOBOR constitutes irreparable harm for purposes of injunctive relief.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 112.531, F.S., relating to definitions.

Section 2 amends s. 112.532(6), F.S., relating to law enforcement officers’ and correctional officers’ rights.

Section 3 amends s. 112.534, F.S., relating to the failure to comply with the LEOBOR.

Section 4 provides an effective date of July 1, 2020.

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<sup>21</sup> Section 112.534(1)(e), F.S.

<sup>22</sup> *Fraternal Order of Police, Gator Lodge 67*, 148 So. 2d at 804 & 808.

<sup>23</sup> Additionally, the agency head must direct an investigation to be initiated against the investigator determined to have intentionally violated the agency disciplinary action procedures under this part. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct and misuse of position. Section 112.534(1)(g), F.S.

<sup>24</sup> Clear and convincing evidence may be defined as an: “intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.” *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill requires all law enforcement and correctional agencies to comply with the LEOBOR for part time law enforcement and correctional officers. The bill also requires the investigations of allegations raised internally and externally to be completed within 180 days. The bill also provides that the 180-days begin when the agency receives notice of the allegation of misconduct by anyone, not only a person authorized by the agency to initiate an investigation. The bill also provides for a private right of action for violations of the LEOBOR. Therefore, the fiscal impact on these agencies will vary based on part time officers employed and frequency of complaints raised internally.

The Department of Highway Safety and Motor Vehicles reports that the bill does not appear to have any fiscal impact on the department.<sup>25</sup>

The Department of Corrections reports that the bill would significantly impact the resources necessary to conduct investigations. The department estimates a 43% increase in investigative staff and a recurring annual cost of 3.1 million dollars.<sup>26</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

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<sup>25</sup> Department of Highway Safety and Motor Vehicles, Agency Analysis of 2020 HB 453, p. 3 (December 18, 2019).

<sup>26</sup> Department of Corrections, Agency Analysis of 2020 HB 453, p. 3-4 (January 17, 2020).

**B. RULE-MAKING AUTHORITY:**

This bill does not confer rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.